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UNCLAS CARACAS 001851

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SUBJECT: VENEZUELA'S REFERENCE PRICES FOR TEXTILES IMPORTS:
POSSIBLE TRADE BARRIER?

REF: USDOC 079690

1. We will attempt to answer the questions posed by reftel providing the reasons for the measures and background information which might be useful in the evaluation of the measures.

2. Upon receipt of the Official Gazette announcement that textile reference prices will be applied to calculate import duties, we made inquiries with customs and with importers including several customs agents used by importers. We found no indication that these prices would result in import barriers but they might result in some paperwork for the importers and possibly problems in obtaining the documents to prove details on previous imports, which will be explained below. All of our contacts agreed that these measures are intended to further curb corruption in or by customs. It must be admitted that Venezuela over the last few years has made great strides in curbing the rampant and scandalous level of corruption from both sides - customs and importers - and complaints are rare now.

3. The increasing use of data banks covering previous imports by tariff number, by importer and by foreign exporter has resulted in customs being more aware of average or customary price levels which are being used to confront an importer whose customs declaration appears to be unrealistically low or high. High prices of course would result in more duties to be paid. If the importer provides proof of higher than normal price, customs can check comparing this with previous imports for the same goods, and it can request proof that the exchange control board has authorized the import at that level. Such overpriced bills have been used and are being used as a means of capital flight with cooperation by the foreign exporter, of course. Under-invoicing on the other hand, is being used by the importer, also usually in cooperation with the foreign exporter, to pay less customs duties. Containers are often used for this purpose. Since customs is allowed to process containers holding the same type of product with the same tariff number, it can process it as such without opening it. Sporadic checks have revealed, however, that far too frequently the containers hold far greater numbers of the products than declared. This also has been used in the case of tires. The import of used tires is prohibited and it was found that containers declared to hold new tires did have several rows of new tires visible upon opening the container but the majority in the back of the container were used tires. This is reported only for the purpose of illustrating the schemes being used of which there were and still are many. The government by the reference price scheme is attempting to cover such and other attempts to bypass established fees and rules and, in addition to curbing corruption by customs, attempts now to put more attention on the importers. The data banks used by customs are rather complete and were compiled using the details of imports and average price levels over the last six years.

4. Customs is not responsible for dumping matters. A dumping investigation can only be triggered by the importers or their association and will be handled only by the Dumping and Subsidies Commission of the Ministry of Production and Commerce. This commission might request from customs, however, data banks revealing import levels and lists of importers and of foreign manufacturers and exporters for specific goods from specific countries. Customs cannot and will not trigger an "alarm" of suspected dumping but can be asked to provide supporting information during an antidumping investigation.

5. Article 3 of Resolution No.377 of the Ministry of Finance clearly states that under no condition may customs use the reference prices as obligatory basis for calculating duties or as official prices nor as substitute for a declared transaction value except under the condition under Article 10 of the resolution when no method of valid evaluation is possible in which case customs may apply the average reference price.

6. Proof of the value of a transaction as required in some instances by customs can be furnished by any of the following

documents (not all of them). This list is contained in Article 52 of the Regulations to Decision 571 of the Andean Community Commission:

- a) proof of foreign exchange transfer effected
 - b) export price lists or similar quotations
 - c) offers or published quotations for export by the same or other exporter for the same products
 - d) specialized publications with export price lists applicable for the Venezuelan market
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- e) insurance policy covering the insured and payable value
 - f) correspondence had with the supplier discussing the agreed upon purchase and export
 - g) any other correspondence supporting the veracity of the claimed price paid or to be paid.

17. Customs will not reject an import if all of the required documents are not furnished. The importer in the ultimate case of refusal by customs to accept proof of veracity of price levels claimed, has the choice of re-exporting the shipment but customs will not confiscate the import. Customs also might be agreeable to have the shipment kept in a bonded warehouse until the needed documents are obtained or re-export is arranged. This storage would be at the cost of the importer. We would assume that such a measure would be extremely rare because the importer would most likely accept the ruling of the customs officials although he always has the recourse of an administrative complaint through customs headquarters or even the recourse of legal action.

18. There are no definite measures or methods in case of price levels which exceed the established maximum price levels. Again, the suspicion of capital flight might arise unless the importer can provide documents which confirm the price in comparison with previous shipments of the same class of products, which also can be verified by customs through its data banks. However, this would have been the responsibility of the exchange control board which upon receiving from the importer the request for foreign exchange would have requested such confirmation and customs most likely would not be concerned.

19. Customs officials have told us that there have been some problems with excessively low prices of some textile products, mainly clothing items, in which case customs suspects an attempt to pay extremely low duties. These cases have always been on behalf of importers of "seconds" (products with small defects) or out of fashion items. The importers of such products, mostly from Colombia or Central America, are low-priced stores in low-income neighborhoods. Customs in such cases, we are told, is not concerned with dumping but with attempted imports of used clothing which is prohibited. In those cases, customs apparently accepts the information of its own data banks, the final invoice of the exporter and the decision of the exchange control board which authorized the dollar transfer. Since the reference prices cannot be used for customs valuation according to Article 3, customs will accept the claimed price levels for calculating the duty.

10. Customs agents at the principal airport of Caracas we have talked to informed us that they have not received any guidance in addition to the text of the resolution. They admit that this, nor any other possible regulation, can cover any eventuality given the huge variety of imports and they appear to use their own judgment in cases of doubts or they discuss the case with their supervisor who, however, can always inquire with customs headquarters to obtain a decision. The customs agents report that there have been some discussions with individual importers but so far no actual complaints. As they put it: "nobody likes to pay duties" and everybody tries to find a way to pay less.

11. In general, we find that there is no burden to speak of for the exporter in complying with these new regulations nor do we see any evidence that they might result in trade barriers. The possible protectionist aspects of the regulations mentioned in our original message would seem to exist only in tightening the honesty of importers and thus making it difficult to import textile products at prices which appear to be not based on industry realities. Nowhere in the resolution is it mentioned that customs has the right to reject an import or to confiscate merchandise once supporting evidence on prices is supplied if requested nor do there appear to be unrealistic time delays in processing imports. U.S. exporters, however, should reject any attempts by their Venezuelan clients to be partner in preparing shipping documents or invoices which contain false information, thus becoming partners to a customs fraud. While the resolution does not contain any information on fines or other measures against foreign exporters, customs fraud will certainly cause severe harm to the local companies. Customs agents at the airport we interviewed stated that exports arriving from the United States very seldom need verification and that their attention is focused mainly on imports from Asia and Central

America.

While we have made every effort to verify the information provided in this report, we cannot guarantee its veracity and have not tried to have the contents of this message evaluated

by legal experts. The report should be considered informative only and should not be used to make legal or commercial decisions.
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